

85<sup>th</sup> Legislative Session – 2010

Committee: Senate State Affairs

Monday, February 22, 2010

P - Present  
E - Excused  
A - Absent

Roll Call

P Abdallah  
P Hanson (Gary)  
P Heidepriem  
P Knudson  
P Olson (Russell)  
P Rhoden  
P Turbak Berry  
P Gray, Vice-Chair  
P Dempster, Chair

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Senator Thomas Dempster.

MOTION: TO APPROVE THE MINUTES OF FRIDAY, FEBRUARY 19, 2010

Moved by: Gray  
Second by: Hanson (Gary)  
Action: Prevailed by voice vote.

SB 104: revise certain provisions regarding disclosure of public information and public meetings.

Presented by: Senator Dave Knudson  
Proponents: David Bordewyk, SD Newspaper Association

MOTION: AMEND SB 104

104jd

On the printed bill, delete everything after the enacting clause and insert:

"

Section 1. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

If a meeting is required to be open to the public pursuant to § 1-25-1 and if any printed material relating to an agenda item of the meeting is prepared or distributed by or at the direction of the governing body or any of its employees and the printed material is distributed before the meeting to all members of the governing body, the material shall be posted on the governing body's website at least twenty-four hours prior to the meeting or at the time the material is distributed to the governing body, whichever is later. If the governing body does not have a website, the printed material shall be available at the official business office of the governing body at least twenty-four hours prior to the meeting or at the time the material is distributed to the governing body, whichever is later. In either case, at least one copy of the printed material shall be available in the meeting room for inspection by any person while the governing body is considering the printed material. However, the provisions of this section do not apply to any printed material or record that is specifically exempt from disclosure under the provisions of this chapter or to any printed material or record regarding the agenda item of an executive or closed meeting held in accordance with § 1-25-2. A violation of this section is a Class 2 misdemeanor.

Section 2. That § 1-25-1 be amended to read as follows:

~~1-25-1. Except as otherwise provided by law, the official meetings of the state and the political subdivisions thereof, including all related boards, commissions and other agencies, and the official meetings of boards, commissions and agencies created by statute or which are nontaxpaying and derive a source of revenue directly from public funds, shall be open to the public, except as provided in this chapter. It does not constitute an official meeting if members of a political subdivision of this state are attending a meeting of the state or one of its political subdivisions, a board, a commission, an association, an agency, or any other public entity for which public notice is provided pursuant to § 1-25-1.1 for the purpose of providing information or observing, and the notice requirements in § 1-25-1.1 do not apply. Meetings, including executive or closed meetings may be conducted by teleconference. Members shall be deemed present if they answer present to the roll call taken by teleconference. Any vote at a meeting held by teleconference shall be taken by roll call. Except for executive or closed meetings held by teleconference, there shall be provided one or more places at which the public may listen to and participate in the proceeding. Except for executive or closed meetings held by teleconference of related boards and commissions of the state, there shall be provided two or more places at which the public may listen to and participate in the proceeding. Except for the Digital Dakota Network, no teleconference may be used in conducting hearings or taking final disposition pursuant to § 1-26-4. Teleconference meetings are subject to the notice provisions of chapter 1-25. The official meetings of the state, its political subdivisions, and public bodies are open to the public unless a specific law is cited by the state, the political subdivision, or~~

the public body to close the official meeting to the public. A political subdivision or public body includes any association, authority, board, commission, committee, council, task force, school district, county, city, town, township, or other agency of the state, which is created or appointed by statute, ordinance, or resolution and is vested with the authority to exercise any sovereign power derived from state law.

It is not an official meeting of one political subdivision or public body if its members provide information or attend the official meeting of another political subdivision or public body for which the notice requirements of § 1-25-1.1 have been met.

Any official meeting may be conducted by teleconference as defined in § 1-25-1.2. A teleconference may be used to conduct a hearing or take final disposition regarding an administrative rule pursuant to § 1-26-4. A member is deemed present if the member answers present to the roll call conducted by teleconference for the purpose of determining a quorum. Each vote at an official meeting held by teleconference shall be taken by roll call.

If the state, a political subdivision, or a public body conducts an official meeting by teleconference, the state, the political subdivision, or public body shall provide one or more places at which the public may listen to and participate in the teleconference meeting. The requirement to provide one or more places for the public to listen to the teleconference does not apply to an executive or closed meeting.

A violation of this section is a Class 2 misdemeanor.

Section 3. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. However, this section does not apply if an audio or video recording of the meeting is available to the public on the governing body's website within five business days after the meeting. A violation of this section is a Class 2 misdemeanor.

Section 4. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

Any final recommendations, findings, or reports that result from a meeting of a committee, subcommittee, task force, or other working group appointed by a governing body that meets the definition of a political subdivision or public body pursuant to § 1-25-1 shall be reported in open meeting to the governing body which appointed the committee, subcommittee, task force, or other working group, and the governing body shall delay taking any official action on the recommendations, findings, or reports until the next meeting of the governing body."

Moved by: Knudson  
Second by: Gray  
Action: Prevailed by voice vote.

MOTION: DO PASS SB 104 AS AMENDED

Moved by: Gray  
Second by: Abdallah  
Action: Prevailed by roll call vote. (9-0-0-0)

Voting Yes: Abdallah, Hanson (Gary), Heidepriem, Knudson, Olson (Russell), Rhoden, Turbak Berry, Gray, Dempster

SB 187: provide for the adjustment of appropriated moneys to projected available revenues.

Presented by: Senator Bob Gray

MOTION: DO PASS SB 187

Moved by: Rhoden  
Second by: Gray  
Action: Prevailed by roll call vote. (7-2-0-0)

Voting Yes: Abdallah, Knudson, Olson (Russell), Rhoden, Turbak Berry, Gray, Dempster

Voting No: Hanson (Gary), Heidepriem

THE CHAIR DEFERRED HB 1060 UNTIL ANOTHER DAY.

SB 195: revise the refunds for new or expanded agricultural facilities and new or expanded business facilities, to repeal the contractors' excise tax on new or expanded power production facilities, and to make certain transfers to the revolving economic development and initiative fund.

Presented by: Senator Dave Knudson  
Proponents: Neil Fulton, Governor's Office  
Opponents: Bill Van Camp, Acciona Wind Energy  
Steve Tomac, Basin Electric Power Coop  
Julie Johnson, Absolutely Aberdeen  
Dennis Duncan, Trans Canada Corporation  
Larry Mann, Powertech, USA

SB 123: suspend certain tax refunds, to suspend the issuance of permits providing tax refunds for certain facilities and productions, to suspend the issuance of permits allowing a lower rate of taxation for certain facilities, and to declare an emergency.

Presented by: Senator Jim Hundstad (Handouts: Doc. 1)

Opponents: Steve Willard, SD Electric Utilities  
David Owen, SD Chamber of Commerce & Industry  
Brett Koenecke, Iberdrola Renewables  
Bill Van Camp, Acciona Wind Energy  
Steve Tomac, Basin Electric Power Coop  
Julie Johnson, Absolutely Aberdeen  
Dennis Duncan, Trans Canada Corporation  
Larry Mann, Powertech, USA

MOTION: AMEND SB 195

195fd

On the printed bill, delete everything after the enacting clause and insert:

" Section 1. That § 10-45B-1.1 be amended to read as follows:

10-45B-1.1. For the purposes of this chapter, the term, new business facility, means a new building or structure or the expansion of an existing building or structure, including a power generation facility, the construction of which is subject to the contractor's excise tax pursuant to chapter 10-46A or 10-46B. A new business facility does not include any building or structure:

- (1) Used predominantly for the sale of products at retail, other than the sale of electricity at retail, to individual consumers;
- (2) Used predominantly for residential housing or transient lodging;
- (3) Used predominantly to provide health care services; ~~or~~
- (4) That is not subject to ad valorem real property taxation or equivalent taxes measured by gross receipts; or
- (5) That is a pipeline, railroad, power transmission line, or other linear conveyance or transmission facility.

Section 2. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding any provision of chapter 10-45B or this Act, no refund may be paid under this chapter based on project costs paid after July 1, 2010, for any project that is a pipeline, railroad,

power transmission line, or other linear conveyance or transmission facility.

Section 3. That § 10-45B-2 be amended to read as follows:

10-45B-2. ~~Any person~~ As provided in this chapter, any person holding a permit issued pursuant to § 10-45B-6 may apply for and obtain a refund or credit for contractors' excise taxes imposed and paid under the provisions of chapter 10-46A for the construction of a new agricultural processing facility and for sales or use taxes imposed and paid by such person under the provisions of chapters 10-45 and 10-46 for the purchase or use of agricultural processing equipment.

Section 4. That § 10-45B-4 be repealed.

~~—10-45B-4. The refund of taxes for a new agricultural processing facility pertains only to project costs incurred and paid after April 1, 1997, and within thirty-six months of the construction date as stated on the application required by § 10-45B-6. No refund may be made unless:~~

- ~~—(1) The project cost exceeds the sum of four million five hundred thousand dollars; and~~
- ~~—(2) The person applying for the refund obtains a permit from the secretary as set forth in § 10-45B-6.~~

Section 5. That § 10-45B-4.1 be repealed.

~~—10-45B-4.1. The refund of taxes pursuant to § 10-45B-2.1 pertains only to project costs incurred and paid after February 1, 2005, up to and including thirty-six months from the construction date if the project costs are sixty million dollars or less and after February 1, 2005, up to and including seventy-two months from the construction date if the project costs are more than sixty million dollars. There is no refund if the person applying for the refund does not obtain a permit from the secretary as set forth in § 10-45B-6.~~

~~—Upon a showing of good cause, the time limits prescribed by this section may be extended by the secretary for a period not to exceed twenty-four months.~~

Section 6. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as follows:

The refund of taxes pursuant to §§ 10-45B-2 and 10-45B-2.1 pertains only to project costs incurred and paid after January 1, 2008, up to and including thirty-six months from the construction date. No refund may be paid unless the person applying for the refund obtains a permit from the secretary as set forth in § 10-45B-6.

Section 7. That § 10-45B-5 be repealed.

~~—10-45B-5. If the project cost for a new agricultural processing facility exceeds four million five hundred thousand dollars, the refund shall be one hundred percent of the taxes attributed to the~~

project cost.

Section 8. That § 10-45B-5.1 be repealed.

~~—10-45B-5.1. The amount of the tax refund for a new business facility shall be a percentage of the taxes paid, as follows:~~

- ~~—(1) For project costs of less than ten million dollars, there shall be no refund;~~
- ~~—(2) For project costs of ten or more million dollars but less than fifteen million dollars there shall be a refund of twenty-five percent of the taxes paid;~~
- ~~—(3) For project costs of fifteen or more million dollars but less than twenty million dollars there shall be a refund of thirty-three percent of the taxes paid;~~
- ~~—(4) For project costs of twenty or more million dollars but less than forty million dollars there shall be a refund of fifty percent of the taxes paid;~~
- ~~—(5) For project costs of forty or more million dollars but less than sixty million dollars there shall be a refund of sixty-seven percent of the taxes paid;~~
- ~~—(6) For project costs of sixty million dollars or more but less than six hundred million dollars there shall be a refund of seventy-five percent of the taxes paid; and~~
- ~~—(7) For project costs of six hundred million dollars and greater there shall be a refund of ninety percent of the taxes paid.~~

Section 9. That § 10-45B-6.1 be repealed.

~~—10-45B-6.1. Any person issued a permit pursuant to this chapter prior to March 31, 1997, may continue to submit claims for the project.~~

Section 10. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding any provision of chapter 10-45B or this Act, this section controls the amount of refunds payable under chapter 10-45B for any new agricultural processing facility or new business facility that has a construction date before July 1, 2010:

- (1) For project costs incurred and paid before July 1, 2010, the amount of the refund shall be determined by applying the provisions of chapter 10-45B in effect prior to the effective date of this Act;
- (2) For project costs incurred before July 1, 2011, and paid from July 1, 2010, to June 30, 2011, inclusive, the amount of the refund shall be as follows:
  - (a) For project costs of less than ten million dollars, there shall be no refund;
  - (b) For project costs of ten or more million dollars but less than forty million dollars, there shall be a refund of forty percent of the taxes paid;
  - (c) For project costs of forty or more million dollars but less than five hundred million dollars, there shall be a refund of fifty percent of the taxes paid; and

- (d) For project costs of five hundred million or more dollars, there shall be no refund; When applying subdivision (2) of this section, all the project costs described in subdivision (1) of this section shall be utilized to determine which refund subsection or subsections apply in subdivision (2) of this section;
- (3) For project costs incurred before July 1, 2012, and paid from July 1, 2011, to June 30, 2012, inclusive, the amount of the refund shall be as follows:
  - (a) For project costs of less than ten million dollars, there shall be no refund;
  - (b) For project costs of ten or more million dollars but less than forty million dollars, there shall be a refund of forty percent of the taxes paid;
  - (c) For project costs of forty or more million dollars but less than five hundred million dollars, there shall be a refund of twenty-five percent of the taxes paid; and
  - (d) For project costs of five hundred million or more dollars, there shall be no refund; When applying subdivision (3) of this section, all the project costs described in subdivisions (1) and (2) of this section shall be utilized to determine which refund subsection or subsections apply in subdivision (3) of this section; and
- (4) For project costs incurred before July 1, 2012, and paid after July 1, 2012, or for project costs incurred and paid after June 30, 2012, the amount of the refund shall be as follows:
  - (a) For project costs of less than ten million dollars, there shall be no refund;
  - (b) For project costs of ten or more million dollars but less than forty million dollars, there shall be a refund of forty percent of the taxes paid; and
  - (c) For project costs of forty or more million dollars, there shall be no refund;When applying subdivision (4) of this section, all the project costs described in subdivisions (1), (2), and (3) of this section shall be utilized to determine which refund subsection or subsections apply in subdivision (4) of this section.

Subdivisions (2), (3), and (4) of this section do not apply to any project that is a pipeline, railroad, power transmission line, or other linear conveyance or transmission facility.

Section 11. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding any provision of chapter 10-45B or this Act, this section controls the amount of refunds payable under chapter 10-45B for any new agricultural processing facility or new business facility that has a construction date on or after July 1, 2010:

- (1) For project costs incurred and paid before July 1, 2011, the amount of the refund shall be as follows:
  - (a) For project costs of less than ten million dollars, there shall be no refund;
  - (b) For project costs of ten or more million dollars but less than forty million dollars, there shall be a refund of forty percent of the taxes paid;
  - (c) For project costs of forty or more million dollars but less than five hundred million dollars, there shall be a refund of fifty percent of the taxes paid; and
  - (d) For project costs of five hundred million or more dollars, there shall be no refund;
- (2) For project costs incurred before July 1, 2012, and paid from July 1, 2011, to June 30,



2012, inclusive, the amount of the refund shall be as follows:

- (a) For project costs of less than ten million dollars, there shall be no refund;
  - (b) For project costs of ten or more million dollars but less than forty million dollars, there shall be a refund of forty percent of the taxes paid;
  - (c) For project costs of forty or more million dollars but less than five hundred million dollars, there shall be a refund of twenty-five percent of the taxes paid; and
  - (d) For project costs of five hundred million or more dollars, there shall be no refund;
- When applying subdivision (2) of this section, all the project costs described in subdivision (1) of this section shall be utilized to determine which refund subsection or subsections apply in subdivision (2) of this section; and
- (3) For project costs incurred before July 1, 2012, and paid after July 1, 2012, or for project costs incurred and paid after June 30, 2012, the amount of the refund shall be as follows:
- (a) For project costs of less than ten million dollars, there shall be no refund;
  - (b) For project costs of ten or more million dollars but less than forty million dollars, there shall be a refund of forty percent of the taxes paid;
  - (c) For project costs of forty or more million dollars, there shall be no refund;
- When applying subdivision (3) of this section, all the project costs described in subdivisions (1) and (2) of this section shall be utilized to determine which refund subsection or subsections apply in subdivision (3) of this section.

This section does not apply to any project that is a pipeline, railroad, power transmission line, or other linear conveyance or transmission facility.

Section 12. That § 10-45B-8 be amended to read as follows:

10-45B-8. Any person issued a permit pursuant to this chapter shall submit a claim for refund to the department no more frequently than on or before the last day of each month and no less frequently than on or before the last day of each month following each calendar quarter. The secretary shall determine and pay the amount of the tax refund within ninety days of receipt of the claim for refund. Ninety-five percent of the amount of refund shall be paid to the claimant in accordance with §§ 10-59-22 and 10-59-23, and five percent shall be withheld by the department. No interest may be paid on the refund amount. ~~If electronic funds transfer is available to the secretary, the secretary shall pay the refund by electronic funds transfer if requested by the claimant.~~ The secretary shall pay the refund by electronic funds transfer.

Section 13. That § 10-45B-8.1 be repealed.

~~10-45B-8.1. No claim for refund pursuant to this chapter may be considered by the department if the claim for refund is received after the following applicable time period:~~

- ~~(1) Twelve months after the thirty-six month time period of § 10-45B-4;~~
- ~~(2) Twelve months after the thirty-six month time period of § 10-45B-4.1 for projects with project costs of sixty million dollars or less;~~
- ~~(3) Twelve months after the seventy-two month time period of § 10-45B-4.1 for projects with~~

~~project costs of more than sixty million dollars; or~~  
~~— (4) — Twelve months after the extended time period of § 10-45B-4.1 for projects that have~~  
~~obtained a time limit extension from the secretary.~~  
~~Moreover, any such claim is barred from any future refund eligibility.~~

Section 14. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as follows:

No claim for refund pursuant to this chapter may be considered by the department if the claim for refund is received twelve months after the thirty-six month time period of section 6 of this Act. Moreover, any such claim is barred from any future refund eligibility.

Section 15. That § 10-45B-8.2 be repealed.

~~— 10-45B-8.2. No document or record in support of any claim for refund may be considered by the~~  
~~department if the documents or records in support of any claim for refund are received after the~~  
~~following applicable time period:~~

- ~~— (1) — Twelve months after the thirty-six month time period of § 10-45B-4;~~
- ~~— (2) — Twelve months after the thirty-six month time period of § 10-45B-4.1 for projects with~~  
~~project costs of sixty million dollars or less;~~
- ~~— (3) — Twelve months after the seventy-two month time period of § 10-45B-4.1 for projects with~~  
~~project costs of more than sixty million dollars; or~~
- ~~— (4) — Twelve months after the extended time period of § 10-45B-4.1 for projects that have~~  
~~obtained a time limit extension from the secretary.~~

~~Moreover, any such document or record is barred from any future consideration.~~

~~— However, if the department requests any additional document or record from the project owner~~  
~~after a review of the claim for refund, and the request is made after the applicable time period~~  
~~provided by this section has expired, the project owner has sixty days to provide the requested~~  
~~document or record. No document or record received after this sixty-day period may be considered~~  
~~by the department. Moreover, any such document or record is barred from any future consideration.~~

Section 16. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as follows:

No document or record in support of any claim for refund may be considered by the department if the document or record in support of any claim for refund is received twelve months after the thirty-six month time period of section 6 of this Act. Moreover, any such document or record is barred from any future consideration.

However, if the department requests any additional document or record from the project owner after a review of the claim for refund, and the request is made after the applicable time period provided by this section has expired, the project owner has sixty days to provide the requested document or record. No document or record received after this sixty-day period may be considered

by the department. Moreover, any such document or record is barred from any future consideration.

Section 17. That § 10-45B-8.3 be repealed.

~~—10-45B-8.3. The provisions of §§ 10-45B-8.1 and 10-45B-8.2 apply to refunds for projects only if the permit was applied for after June 30, 2009.~~

Section 18. That § 10-45B-9 be amended to read as follows:

10-45B-9. The amounts withheld by the department in accordance with § 10-45B-8 shall be retained until the project has been completed and the claimant has met all the conditions of ~~§ 10-45B-4 or 10-45B-4.1~~ section 6 of this Act, at which time all sums retained shall be paid to claimant.

Section 19. That chapter 10-46C be repealed.

Section 20. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as follows:

The department shall transfer to the revolving economic development and initiative fund established by § 1-16G-3 an amount equal to ten percent per fiscal year of the sales, use, and contractors' excise taxes paid on projects receiving a refund under section 11 of this Act. The total amount transferred pursuant to this section per fiscal year may not exceed ten million dollars."

Moved by: Knudson  
Second by: Gray  
Action: Prevailed by voice vote.

MOTION: AMEND THE PENDING AMENDMENT

195oa

On the pending amendment (195fd), delete sections 1 and 2.

Moved by: Olson (Russell)  
Second by: Rhoden  
Action: Prevailed by voice vote.

MOTION: AMEND THE PENDING AMENDMENT

195ob

On the pending amendment (195fd), in Section 10, delete the last sentence.

On the pending amendment (195fd), in Section 11, delete the last sentence.

On the pending amendment (195fd), in Section 14, delete "6" and insert "4".

On the pending amendment (195fd), in Section 16, delete "6" and insert "4".

On the pending amendment (195fd), in Section 18, delete "6" and insert "4".

On the pending amendment (195fd), in Section 20, delete "11" and insert "9".

Moved by: Gray  
Second by: Rhoden  
Action: Prevailed by voice vote.

MOTION: DO PASS SB 195 AS AMENDED

Moved by: Knudson  
Second by: Hanson (Gary)  
Action: Prevailed by roll call vote. (8-1-0-0)

Voting Yes: Abdallah, Heidepriem, Knudson, Olson (Russell), Rhoden, Turbak Berry, Gray, Dempster

Voting No: Hanson (Gary)

MOTION: AMEND TITLE OF SB 195

195ftb

On page 1, line 1, of the printed bill, delete everything after "to" and insert "revise the refunds for new or expanded agricultural facilities and new or expanded business facilities, to repeal the contractors' excise tax on new or expanded power production facilities, and to make certain transfers to the revolving economic development and initiative fund.".

Moved by: Knudson  
Second by: Gray  
Action: Prevailed by voice vote.

MOTION: DEFER SB 123 TO THE 41<sup>ST</sup> LEGISLATIVE DAY

Moved by: Knudson  
Second by: Rhoden  
Action: Prevailed by roll call vote. (7-2-0-0)

Voting Yes: Abdallah, Hanson (Gary), Knudson, Olson (Russell), Rhoden, Gray, Dempster

Voting No: Heidepriem, Turbak Berry

SB 161: impose a fee on certain pipelines carrying crude oil and to create a crude oil pipeline compensation fund that may be used in the event of a crude oil spill.

Presented by: Senator Ryan Maher  
Proponents: Luke Temple, Dakota Rural Action  
John Harter, self, Winner  
Jeremiah M. Murphy, SD Stockgrowers  
Michael Melius, South Dakota Chapter of the Sierra Club  
Paul Semans, self, Draper  
Opponents: Dennis Duncan, Trans Canada Corporation  
Jim Krause, Transcanada

MOTION: DO PASS SB 161

Moved by: Abdallah  
Second by: Hanson (Gary)  
Action: Prevailed by roll call vote. (7-1-1-0)

Voting Yes: Abdallah, Hanson (Gary), Heidepriem, Knudson, Rhoden, Turbak Berry, Dempster

Voting No: Olson (Russell)

Excused: Gray

MOTION: ADJOURN

Moved by: Hanson (Gary)  
Second by: Knudson  
Action: Prevailed by voice vote.

Cheri Hauschild  
Committee Secretary

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Thomas A. Dempster, Chair